

Oct 30, 2024

SEAN F. McAVOY, CLERK

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF WASHINGTON

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

6 ERICA LORAINA ELMGREN,

7 Defendant.

No. 2:20-cr-00172-MKD-2

ORDER DENYING THE UNITED  
STATES' MOTION FOR  
DETENTION AND SETTING  
MAGISTRATE CONDITIONS OF  
RELEASE

**ECF No. 217**

8 On Tuesday, October 29, 2024, the Court conducted a hearing on the United  
9 States' Motion for Detention (ECF No. 217). Defendant was represented by  
10 Assistant Federal Defender Juliana Van Wingerden. Assistant United States  
11 Attorney Laurel Holland represented the United States.

12 The Court has considered the Petitions (ECF Nos. 214, 218), the Violation  
13 Reports (ECF Nos. 214-1, 218-1), the Presentence Investigation Report (ECF No.  
14 146), and the arguments of counsel.

15 On October 22, 2024, the Court held an initial appearance for supervised  
16 release Violations and set the detention hearing. ECF No. 226.

17 Defense counsel now requests the Court order Defendant's release from the  
18 Benton County Jail on November 12, 2024, by no later than 10:00 a.m., to  
19 participate in inpatient treatment at American Behavioral Health Services  
20 ("ABHS"). ECF No. 217. ABHS will transport Defendant to treatment. *Id.*

ORDER - 1

1 The United States contended that if released, Defendant would present a risk  
2 of danger to the safety of the community. Defendant, through counsel, contended  
3 there are conditions the Court could impose that would reasonably assure  
4 Defendant's appearance as required and the safety of the community if released.

5 The United States Probation/Pretrial Services Office agrees with Defendant's  
6 request for inpatient treatment.

7 "[Federal Rule of Criminal Procedure] 32.1(a)(6) governs release pending a  
8 hearing on a violation of probation or supervised release." Fed. R. Crim. P. 46(d).  
9 Under that Rule, the Court may release or detain a defendant pursuant to 18 U.S.C.  
10 § 3143(a), pending further proceedings. Fed. R. Crim. P. 32.1(a)(6).<sup>1</sup> Under that  
11 statute, such a defendant shall be detained unless "the judicial officer finds by clear  
12 and convincing evidence that the person is not likely to flee or pose a danger to the  
13 safety of any other person or the community if released . . ." 18 U.S.C.  
14 § 3143(a)(1). If the judicial officer makes such a finding, the defendant shall be  
15 released pursuant to 18 U.S.C. § 3142(b) or (c). *Id.* This burden of clear and  
16 convincing evidence lies with the defendant. Fed. R. Crim. P. 32.1(a)(6); *see*

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<sup>1</sup> Had Defendant previously appeared before this Court on alleged violations of  
19 supervised release, and had this Court imposed its own conditions of continued release  
20 pending revocation, the decision on detention would instead be governed by the  
provisions of 18 U.S.C. § 3148.

1 *United States v. Loya*, 23 F.3d 1529, 1530 (9th Cir. 1994).

2 This Court has taken into account the nature and circumstances of  
3 conviction,<sup>2</sup> the weight of the evidence against the Defendant, as well as  
4 Defendant's history and characteristics, including character, physical and mental  
5 condition, family ties, employment, financial resources, length of residence in the  
6 community, community ties, past conduct and history relating to alcohol and drug  
7 abuse, and also criminal history, record concerning appearance at court  
8 proceedings, and the nature and seriousness of the danger to the community posed  
9 by Defendant's release.

10 The United States argued that detention is proper due to Defendant's history  
11 of substance use and pretrial violations during treatment, as well as Defendant's  
12 treatment violations while in Washington Department of Corrections' custody.  
13 The Court agrees that Defendant's conduct is concerning. However, the Court  
14 finds that, given Defendant's history of substance use, Defendant's risk of danger  
15 can be mitigated by inpatient substance use treatment.

16 The Court finds that Defendant has established by clear and convincing  
17 evidence conditions or a combination of conditions of release that would

18 \_\_\_\_\_  
19 <sup>2</sup> While 18 U.S.C. § 3143(a)(1) directs the Court to consider release conditions under 18  
20 U.S.C. § 3142(c), this statute contemplates an offense charged, which is inapposite of  
the supervised release and post-plea contexts.

1 reasonably assure Defendant will not flee. Furthermore, Defendant has established  
2 by clear and convincing evidence conditions or a combination of conditions of  
3 release that would mitigate the risk to the safety of other persons or the community  
4 that Defendant poses.

5 Accordingly, **IT IS ORDERED:**

6 1. The United States' Motion for Detention (**ECF No. 217**) is **DENIED**.

7 2. If a party desires that another court review this Order pursuant to 18

8 U.S.C. § 3145, that party shall immediately notify the Magistrate Judge and  
9 opposing counsel. LCrR 46(k)(1). The party shall then promptly file a motion for  
10 review before the assigned District Judge. LCrR 46(k)(3). If the case has not yet  
11 been assigned to a District Judge, or the assigned District Judge is unavailable, the  
12 motion shall be noted for hearing before the Chief District Judge. *Id.*

13 3. **Defendant shall be temporarily released from the Benton County**

14 **Jail to a representative of ABHS on Tuesday, November 12, 2024, at 10:00**

15 **AM** and shall proceed directly to and enter treatment at ABHS.

16 4. If Defendant leaves before or during the transport to the treatment

17 facility, after arrival to the treatment facility, or is terminated from treatment for

18 any reason, the treatment facility personnel shall immediately notify the United

19 States Probation/Pretrial Services Officer, who shall in turn immediately notify the

20 Court.

1       5. Defendant shall return to the custody of the United States Marshals  
2 Service upon completion or termination of treatment, absent further order of the  
3 Court. **Counsel for Defendant is advised to monitor the timing of Defendant's**  
4 **release from inpatient treatment and—prior to the release date—file a motion**  
5 **to reopen that advises the Court as to what measures would be in place for**  
6 **proposed program in the community.** Any motion to reopen shall be a  
7 maximum of four-pages in length and indicate whether opposing counsel; United  
8 States Probation/Pretrial Services; or another party with a substantial interest in the  
9 motion objects, whether a hearing is desired, and whether a supplemental pretrial  
10 services report is requested. If the moving party, after the exercise of due  
11 diligence, is unable to determine the position of any party listed above, the moving  
12 party may in the alternative document the date; time; and manner of each effort  
13 made to determine that party's position and request the Court treat the motion as  
14 expedited and submitted without argument. For any motion that includes a plan  
15 for substance abuse treatment, Defendant shall attach completed waivers of  
16 confidentiality permitting the United States Probation/Pretrial Services Office and  
17 the treatment provider to exchange without qualification, in any form and at any  
18 time, any and all information or records related to Defendant's conditions of  
19 release and supervision, and evaluation, treatment, and performance in the  
20 program. **Motions in Yakima and Spokane cases shall be heard on the**

1 **following Wednesday docket, and Richland cases shall be heard on the**  
2 **following Thursday docket.** If the Court determines that oral argument is  
3 unnecessary on the motion, it shall be set for decision on the Court's 6:30 docket.

4 6. Defendant is bound over to Judge Mary K. Dimke for further  
5 proceedings.

6 7. While attending treatment, Defendant shall abide by the following  
7 conditions of release at all times as directed by the United States Probation/Pretrial  
8 Services Office:

9 **STANDARD CONDITIONS OF RELEASE**

10 1. Defendant shall not commit any offense in violation of federal, tribal,  
11 state, or local law. Defendant shall advise the supervising United States  
12 Probation/Pretrial Services Officer and defense counsel within one business day of  
13 any charge, arrest, or contact with law enforcement. Defendant shall not work for  
14 the United States government—or any federal, tribal, state, or local law  
15 enforcement agency—unless Defendant first notifies the supervising United States  
16 Probation/Pretrial Services Officer in the captioned matter.

17 2. Defendant shall immediately advise the Court and the United States  
18 Attorney in writing before any change in address.

19 3. Defendant shall appear at all proceedings and surrender as directed for  
20 service of any sentence imposed.

1       4.    Defendant shall sign and complete form A.O. 199C before being  
2 released.

3       5.    Defendant shall not possess a firearm, destructive device, or any  
4 dangerous weapons.

5       6.    Defendant shall report to the United States Probation/Pretrial Services  
6 Office before or immediately after release and shall report as often as they direct,  
7 at such times and in such manner as they direct.

8       7.    Defendant shall contact defense counsel at least once a week.

9       8.    Defendant shall refrain from use or unlawful possession of a narcotic  
10 drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed  
11 by a licensed medical practitioner in conformance with Federal law. Defendant  
12 may not use or possess marijuana, regardless of whether Defendant has been  
13 authorized medical marijuana under state law.

14       9.    Defendant shall surrender any passport to United States  
15 Probation/Pretrial Services and shall not apply for a new passport.

16       10.   Defendant is further advised it is unlawful for any person who is  
17 under indictment for a crime punishable by imprisonment for a term exceeding one  
18 year, to receive, ship or transport in interstate or foreign commerce any firearm or  
19 ammunition or receive any firearm or ammunition that has been shipped or  
20 transported in interstate or foreign commerce. 18 U.S.C. § 922(n).

1 **SPECIAL CONDITIONS OF RELEASE**

2 1. Defendant shall remain in the Eastern District of Washington unless  
3 given permission by the United States Probation/Pretrial Services Office.

4 2. Defendant shall notify the United States Probation/Pretrial Services  
5 Office within 24 hours of any change in address, telephone number, or  
6 employment.

7 3. Defendant shall avoid all contact, direct or indirect, with any  
8 codefendants or persons who Defendant would reasonably know are or may  
9 become a victim or potential witness in the subject investigation or prosecution.  
10

11 4. Defendant shall maintain employment, or, if unemployed, shall  
12 actively seek employment and/or maintain or commence an educational program.  
13

14 5. Defendant shall submit to a substance abuse evaluation and undergo  
15 any recommended substance abuse treatment as directed by the United States  
16 Probation/Pretrial Services Office. Prior to commencing any evaluation or  
17 treatment program, Defendant shall provide waivers of confidentiality permitting  
18 the United States Probation/Pretrial Services Office and the treatment provider to  
19 exchange without qualification, in any form and at any time, any and all  
20 information or records related to Defendant's conditions of release and

1 supervision, and evaluation, treatment, and performance in the program. It shall be  
2 the responsibility of defense counsel to provide such waivers.

3       6. Defendant shall submit to random urinalysis testing as directed by the  
4 United States Probation/Pretrial Services Office. Defendant shall refrain from  
5 obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency  
6 and accuracy of any prohibited substance testing that is required as a condition of  
7 release.

8       7. Defendant shall submit to a mental health evaluation and undergo any  
9 recommended treatment as directed by United States Probation/Pretrial Services.  
10 Prior to commencing any evaluation or treatment program, Defendant shall provide  
11 waivers of confidentiality permitting the United States Probation/Pretrial Services  
12 office and the treatment provider to exchange without qualification, in any form  
13 and at any time, any and all information or records related to Defendant's  
14 conditions of release and supervision, and evaluation, treatment, and performance  
15 in the program. It shall be the responsibility of defense counsel to provide such  
16 waivers.

17       8. Defendant shall participate in a program of GPS location monitoring.  
18 Defendant shall wear, at all times, an electronic device under the supervision of the  
19 United States Probation/Pretrial Services Office. In the event Defendant does not  
20

1 respond to location monitoring or cannot be found, the United States  
2 Probation/Pretrial Services Office shall forthwith notify the United States Marshals  
3 Service, who shall immediately find, arrest, and detain the defendant. Defendant  
4 shall pay all or part of the cost of the program based upon ability to pay as  
5 determined by the United States Probation/Pretrial Services Office. Defendant  
6 shall refrain from obstructing or attempting to obstruct or tamper, in any fashion,  
7 with the efficiency and accuracy of any location monitoring that is required as a  
8 condition of release.

9       9.     Defendant shall be restricted to the approved residence at all times  
10 except for attorney visits; court appearances; case-related matters; court-ordered  
11 obligations. Defendant may attend other essential activities as pre-approved by the  
12 United States Probation/Pretrial Services Office, including but not limited to  
13 employment; grocery shopping; primary caregiving; religious services; medical  
14 necessities; and substance abuse testing or treatment.

15       **IT IS SO ORDERED.**

16       DATED October 30, 2024.



17       A handwritten signature in blue ink that reads "Alexander C. Ekstrom".

18       ALEXANDER C. EKSTROM

19       UNITED STATES MAGISTRATE JUDGE